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**BEFORE THE  
STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS**

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Application of St. Croix Station Homeowner's Association for a Permit to Construct Docks on the Bed of the St. Croix River, Village of North Hudson, St. Croix County, Wisconsin )		Case No. 3-WC-94-1057
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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The St. Croix Station Homeowner's Association, c/o Carol Arneson, 246 Station Circle N, Hudson, Wisconsin, 54016, has applied to the Department of Natural Resources for a permit to place a six-slip dock in the St. Croix River. The dock will be constructed of wood and anchored with spudpoles. The proposed project would be located in Government Lot 1 of Section 11, Township 29 North, Range 20 West, Village of North Hudson, St. Croix County, Wisconsin.

The Department of Natural Resources issued a Public Notice which stated that unless written objection was made within thirty days after publication, the Department might issue a decision on the permit without a hearing. Timely objections were received by the Department.

On March 23, 1995, the Department filed a Request for Hearing with the Division of Hearings and Appeals.

Pursuant to due notice hearing was held on May 3, 1995, Jeffrey D. Boldt, Administrative Law Judge, presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Department of Natural Resources, by

Richard Henneger, Attorney  
P. O. Box 7921  
Madison, WI 53707-7921

St. Croix Station Homeowner's Association, by

Robert W. Mudge, Attorney  
110 Second Street  
Hudson, WI 54016

Citizens for the Preservation of the St. Croix, by

Audrey Halverson, Secretary  
W12489 - 820th Avenue  
River Falls, WI 54022

Starr E. Paton  
240 Station Lane  
North Hudson, WI 54016

H. Earl Paton  
240 Station Lane  
North Hudson, WI 54016

Mary Krueger  
208 Station Circle  
North Hudson, WI 54016

Len Meissen  
226 Station Lane  
North Hudson, WI 54016

#### FINDINGS OF FACT

1. St. Croix Station Homeowner's Association, Inc., c/o Carol Arneson, 246 Station Circle N, Hudson, Wisconsin 54016, completed filing an application with the Department for a permit under sec. 30.12, Stats., to construct a six-slip pier on the bed of the St. Croix River, Town of North Hudson, St. Croix County, Wisconsin. The Department and the applicant have fulfilled all procedural requirements of secs. 30.12 and 30.02, Stats.

2. The applicant owns real property located on Outlot 1, St. Croix Station Subdivision in Section 11, Township 29 North, Range 20 West, Village of North Hudson, St. Croix County. The above-described property abuts the St. Croix River which is navigable in fact at the project site.

3. The applicant proposes to construct a T-shaped floating pier constructed of treated lumber with barrel flotation, anchored by 4-inch spudpoles driven into the bed of the St. Croix River. The dock would project 85 to 90 feet into the water. The pier would be located 175 feet down stream of the existing beach area.

Four 12-foot wide slips and two 14-foot wide slips, 28 feet long would be configured on the landward side of the T-shape.

4. The purpose is to provide pier slips on a rotating basis, to the 30-odd members of the St. Croix Station Homeowners Association.

The Association owns 1,320 feet of riparian frontage at the site in the thin outlet along the river. Slips would become available to Association members on a rotating basis.

5. The proposed structure will not materially obstruct existing navigation on the St. Croix River and will not be detrimental to the public interest upon compliance with the conditions of this permit.

6. The Lower St. Croix River, including the waters near the project site, have been designated as a National Scenic Riverway and is accordingly entitled to special protections pursuant to sec. 30.27, Stats.

7. The Lower St. Croix Management Commission has recently adopted Riverway Management Policy Resolutions which include restrictions on the number of boat slips placed upon the bed of the riverway. Mr. Terry Moe, WDNR Western Boundary Rivers Coordinator, testified that the Commission guidelines are met in the instant application because it does not involve more than one pier per 200 feet of riparian frontage.

Further, DNR Area Water Management Specialist, Daniel Koich, testified that he scrutinized the instant permit application more restrictively because the St. Croix is a National Scenic Riverway. Under current DNR guidelines, not involving a national Scenic Riverway, the applicants would have been eligible for some 27 or 28 pier slips given their 1,320 feet of riparian frontage.

The Department opposed the original pier application requesting 34 pier slips. Working with the applicants and the Commission, the current six-slip proposal was arrived at with Department approval. Several objectors testified that they believed no piers or similar structures should be placed along a National Scenic Waterway. However, this view ignores the long tradition and much legal precedent allowing riparians access to public waterways.

The ALJ finds that the six-pier proposal well balances the rights of riparians and the need to maintain the natural scenic beauty and other public interests on the St. Croix River.

8. The applicant is financially capable of constructing, maintaining, monitoring or removing the structure if it should be found in the public interest to do so.

9. The proposed structures will not reduce the effective flood flow capacity of the St. Croix River upon compliance with the conditions in the permit.

10. The proposed structures will not adversely affect water quality nor will they increase water pollution in the St. Croix River. The structure will not cause environmental pollution as defined in sec. 144.01(3), Stats., if the structures are built and maintained in accordance with this permit.

11. The permit conditions described below are necessary to protect the public interest in navigable waters. The applicants have agreed to abide by these conditions.

12. There are currently three mooring buoys at the site, owned by three backlot Association members. Under the current proposal, these buoys would be removed. The Association wishes to reserve the right to reapply for permits to place these buoys at some later date. However, the ALJ finds that a necessary condition to granting of the instant permit is that no such buoys nor any other structures be placed over and above the six slips described herein.

13. The Department of Natural Resources has made an environmental assessment of the proposed project and determined that the grant or denial of the permit requested does not constitute a major state action significantly affecting the quality of the human environment.

## DISCUSSION

The Department and the Commission have developed comprehensive new guidelines which restrict the placement of piers on the Lower St. Croix Riverway. While such guidelines are not legally binding, the ALJ specifically adopts the Commission's reasoning that the guidelines reflect a coherent and thoughtful effort to balance user conflicts on the Lower St. Croix. Contrary to the position of some of the objectors, these guidelines represent a more restrictive policy on the placement of piers. The guidelines represent a balancing of the rights of riparians and of the public on the St. Croix River. The applicants have agreed to drastically reduce the number of piers they have applied for in deference to these guidelines. Under these circumstances it is appropriate to grant the permit under the conditions sought by the Department. The only substantive change is a provision that the mooring buoys not be replaced after issuance of the instant permit. This provision is consistent with Commission guidelines restricting mooring slips along the Lower St. Croix Scenic Riverway.

### CONCLUSIONS OF LAW

1. The applicants are riparian owners within the meaning of sec. 30.12, Stats.
2. The proposed facility described in the Findings of Fact constitutes a structure within the meaning of sec. 30.12, Stats.
3. The Division of Hearings and Appeals has authority under secs. 30.12 and 227.43(1)(b), Stats., and in accordance with the foregoing Findings of Fact, to issue a permit for the construction and maintenance of said structure subject to the conditions specified.
4. The project is a type III action under sec. NR 150.03(8)(f)4, Wis. Adm. Code. Type III actions do not require the preparation of a formal environmental impact assessment. The Department has prepared an environmental analysis in conformance with sec. 1.11, Stats., which concludes that the proposed project is not a major action significantly affecting the quality of the human environment.

### PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the applicant, a permit under sec. 30.12, Stats., for the construction of a structure as described in the foregoing Findings of Fact, subject, however, to the conditions that:

1. The authority herein granted can be amended or rescinded if the structure becomes a material obstruction to navigation or becomes detrimental to the public interest.
2. The permittee shall waive any objection to the free and unlimited inspection of the premises, site or facility at any time by any employee of the Department of Natural Resources for the purpose of investigating the construction, operation and maintenance of the project.
3. A copy of this permit shall be kept at the site at all times during the construction of the structure.
4. The permit granted herein shall expire three years from the date of this decision, if the structure is not completed before then.

The project must be completed on or before October 1, 1996. No construction may begin or continue after this date unless a new permit or permit extension is granted in writing by the Department. This dock may be replaced annually.

5. The permittee shall obtain any necessary authority needed under local zoning ordinances and from the U.S. Army Corps of Engineers.

6. The permittee shall notify the Water Management Specialist, Daniel S. Koich at (715) 839-3769, not less than 5 working days before starting construction and again not more than 5 days after the project has been completed.

7. Any area disturbed during construction shall be seeded and mulched or ripped as appropriate to prevent erosion and siltation.

8. No heavy equipment shall be operated in the lake at any time unless written notification is made to the Water Management Specialist, Daniel S. Koich, at least 5 working days in advance.

9. The dock shall be located no less than 175 feet downstream from the beach. The downstream end of the beach shall be identified as the downstream boundary of the access easement leading to Outlot 1 as shown on Attachment #2 of this permit.

10. All three of the existing mooring buoys are to be removed and the Corps of Engineers permits for these buoys relinquished by the current non-riparian landowners. So long as this permit shall remain in effect, the Department shall not approve placement of any further mooring buoys.

11. The permit must state that the St. Croix Station Homeowners Association, Inc., as owners of Outlot 1, shall own the docks, including the walkway, and may license the slips to association members only, as agreed to in the document entitled "OWNERSHIP, ORGANIZATIONAL STRUCTURE, AND OPERATIONAL MANAGEMENT OF DOCKS IN ST. CROIX STATION" dated October 9, 1994, received by the Department on December 27, 1994. The ownership of the docks may not be conveyed or transferred from the St. Croix Station Homeowners Association, Inc., without the prior written approval of the Department.

12. The dock may be present only during the open water season.

13. In the event a device will be used to anchor the dock on the beach, other than the spudpoles, the Association must advise the Department and obtain Departmental approval of the device's design, materials, and dimensions prior to construction.

14. Transient mooring outside of the designated slips is permissible up to 72 hours.

15. Acceptance of this permit shall be deemed acceptance of all conditions herein.

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This permit shall not be construed as authority for any work other than that specifically described in the Findings of Fact.

Dated at Madison, Wisconsin on May 16, 1995.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 267-2744

By \_\_\_\_\_  
Jeffrey D. Boldt  
Administrative Law Judge

ORDERS\STCROIX.LAM

and St. Croix

ATTACHMENT #1

Low Water  
Shoreline  
675'

65 ft

⑥

12

⑤

12

④

14

77'

28'

5'

44'

15.5'

③

14

②

12

5'

①

12

53'





Drawing #1

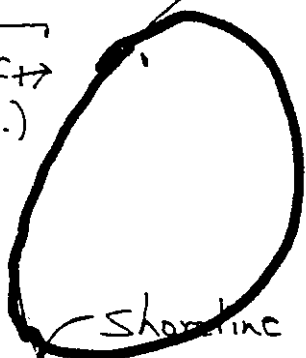
ATTACHMENT #2

mile 19

St. Croix River  
(3000 ft wide)

Scale

← 100 ft →  
(approx.)

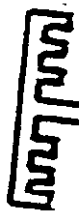


Outlot 1  
4.2 Acres

1320' + frontage

Station Cr. N.

No less Than  
175 ft



## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.